Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Pertition No. 489 of 2002 (S/B)

Dinesh Kumar Verma ……. Petitioner

Versus

Union of India & others ……. Respondents

Mr. Gopal Narain, learned counsel holding brief of
Mr. Alok Singh, learned senior counsel for the petitioner.
Mr. V.B.S. Negi, learned Sr. Central Govt. Standing Counsel.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the order dated 04.01.2001 (Copy Annexure- 1 to the writ petition) passed by respondent No. 3. Also mandamus has been sought commanding the respondents to give appointment in service to the petitioner on compassionate ground.

2. Brief facts of the case, as narrated in the writ petition, are that petitioner's father was a confirmed Government servant on the post of Field man (Farm Jamadar) in the Remount Training School and Depot Hempur, District Udham Singh Nagar. He died in harness on 01.09.1999 due to cardiac arrest. On the death of the father of the petitioner the family of the deceased suffered grave financial hardship, as even elder brother of the petitioner was an employed person. Mother of the petitioner is about 58 years of age. She made a representation dated 05.10.1999 to respondent No. 3 for the appointment of elder son of the deceased. In response to said representation vide letter dated 9th October 1999 (copy Annexure- 2 to the writ petition) signed by Deputy Commandant on behalf of the Commandant, Remount Training School & Depot Hempur (respondent No. 3) asked the mother of the petitioner to send the relevant documents for

appointment of her elder son on compassionate ground. In the writ petition it is alleged that the mother of the petitioner sent necessary papers with her representation dated 08.04.2000 to the respondent No. 3 for the appointment of the elder brother of the petitioner. A reminder was also sent to respondent No. 3 on 09.06.2000 (copy Annexure- 3 to the writ petition) in this regard. However, vide letter dated 14.06.2000, the Deputy Commandant posted in Remount Training School and Depot, Hempur informed the mother of the petitioner that her elder son Mr. Mahadev Verma was already over aged and asked to send necessary papers of her younger son (the petitioner). Thereafter, the necessary papers relating to the petitioner were sent to the respondent No. 3 by his mother. But vide order dated 04.01.2001 (copy Annexure- 1 to the writ petition), the respondent No.3 rejected the petitioner's case on the ground that for appointment on the compassionate ground under the Rules it was necessary to make the representation within a period of one year. The petitioner's case is that since his mother has already applied for the job for the elder son and sent necessary papers relating thereto, therefore, the submission of papers of the younger son cannot be said to be time barred. It is further alleged in the writ petition that the respondents have not considered the financial hardship of the petitioner and his family members. Hence the writ petition.

3) A counter affidavit has been filed on behalf of the respondents in which it has been stated that as per the Government Orders only 5% of the vacancies in Group 'C' and Group 'D' can be filled on the compassionate ground provided the application is made in this regard within a period of one year of the death of the Government servant. It is further stated in the counter affidavit that after the death of the father of the petitioner on 01.09.1999 neither any post has been released by the Government for filling the vacancy nor the relevant papers for

the job were sent to the respondent by the petitioner within a period of one year as required under the Rules. Still the petitioner's name was kept in the waiting list by the respondent No. 3 for one year on the request of his mother but after the period of one year was over, the papers submitted by the petitioner can not be considered. It has been further stated in the counter affidavit that after the death of father of the petitioner various dues payable to the tune of Rs. 2,50,897/- were paid to the family members apart from Rs. 2,667/- per month as family pension. In the counter affidavit it has also been stated that as per the guidelines of the Planning Commission, the Government has to consider if the family is below the poverty line i.e. the income of the family consisting of five members is less than Rs. 1767.20 per month. For the facts as above the petitioner is not covered under that yardstick also and cannot be said to be a really deserving candidate for appointment on compassionate ground. It is admitted in the counter affidavit that petitioner's mother on 9th October, 1999 had applied for job to her elder son and even his papers were sent after six months while that of the petitioner were sent seven months thereafter. Denying the rest of the contents of the writ petition, it is stated that the petitioner is not entitled to appointment on the compassionate ground.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether the petitioner is wrongly denied appointment on compassionate ground, after death of his father, by the respondents?

6) Admittedly, petitioner's father was Field man in Remount Training School and Depot Hempur District Udham Singh Nagar, who died in harness on 01.09.1999. This fact is also not

disputed that the petitioner's mother moved an application in the month of October 1999 requesting the respondent No. 3 to provide job to her elder son on the compassionate ground. It is also not denied that when the respondent No. 3 asked the petitioner's mother send necessary papers of the petitioner's elder brother the same were sent to the respondent and the petitioner's elder brother was found to be over aged. The dispute revolves round the point that whether the petitioner made any application for the appointment on the compassionate ground within a period of one year and if not is he entitled to the appointment on the said ground as alleged by him. The perusal of the Annexure- 1, the impugned letter dated 04.01.2001 by which the petitioner was refused appointment on compassionate ground shows that the petitioner's mother was informed by the respondent No. 3 that as per the amended Rules appointment on the compassionate ground can be given only within 5% vacant posts provided the request is made within a period of one year of the death of the Government servant. By said letter the petitioner's mother was informed that since request for the petitioner was made after one year, he cannot be given the job on compassionate ground.

7) Learned counsel for the petitioner could not show me application, if any moved by the petitioner within a period of one year for appointment on the compassionate ground to the respondent No. 3 Even as on today infact there is no application made by the petitioner for appointment for the job on compassionate ground. From no stretch of imagination request made by the petitioner's mother for giving appointment to the elder brother of the petitioner can be said to be an application for job on behalf of the petitioner. Admittedly, the certificates of the petitioner were submitted that too by the mother of the petitioner after one year was over form the date of death of Mr. Jag Mohan Verma, the deceased Government employee.

8) Learned counsel for the petitioner drew my attention to the letter dated 14.06.2000 (copy Annexure- 4 to the writ petition) and argued that the respondent No. 3 himself suggested that since the elder son is over aged so the papers be sent in respect of younger son for the job and further argued that the candidature of the petitioner can be treated to be before September 2000 on the basis of said letter. In the opinion of this Court, it cannot be treated so for the reason because still the request was to be made on the basis of said letter dated 14.06.2000 for the job to be given to the petitioner. Even, since June 2000 for the reasons best known to the petitioner and his mother, no papers were sent till September 2000 to the respondent No. 3. As such the respondent No. 3 cannot be held to be at fault for not giving job to the petitioner.

9) In view of the above discussion as to the fact that petitioner did not move application within time allowed as per the Rules and the facts regarding payment of necessary dues of the deceased to the family members of the deceased including the family pension, this Court is not inclined to issue writ sought through the present petition.

10) In the above circumstances, it cannot be said if the petitioner was wrongly denied appointment on the compassionate ground by the respondent. Accordingly, the writ petition is liable and is dismissed. No order as to costs.

(P.C. Pant, J.)

Dt.: 28th September, 2004
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